April 14, 2015

Chairman Orrin G. Hatch
Senate Committee on Finance
104 Hart Senate Office Building
Washington D.C. 20510

Ranking Member Ron Wyden
Senate Committee on Finance
221 Dirksen Senate Office Building
Washington D.C. 20510

Senator John Thune, Co-Chair
Business Income Tax Working Group
Senate Committee on Finance
493 Russell Senate Office Building
Washington D.C. 20510

Senator Ben Cardin, Co-Chair
Business Income Tax Working Group
Senate Committee on Finance
509 Hart Senate Office Building
Washington D.C. 20510

**Re: Preserving the Deductibility of Advertising as a Business Expense**

**Free Community Paper Industry Comments to the Chairman's Bipartisan Tax Reform Working Groups**

Dear Chairman Hatch, Ranking Member Wyden and Co-Chairs Thune and Cardin:

The united Free Community Paper Industry submits these comments in response to the Senate Committee on Finance request for stakeholder input to the Chairman's Bipartisan Working Groups on Tax Reform. Our focus is limited to the preservation of the longstanding treatment of Advertising as a fully deductible business expense at the time paid or incurred. We discuss the disastrous policy implications of proposals to amortize Advertising expenses, along with related wages, as seriously considered in the last Congress.[1]

Our hometown publishers strenuously oppose any proposal to tamper with the treatment of Advertising as an ordinary and necessary business expense. Likewise, we object to similar

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1 *See* Senate Finance Committee Staff Discussion Drafts on proposed changes to the Tax Code, specifically the ***Cost Recovery and Accounting Draft***, as released November 21, 2013, at subchapter "Cost Recovery for Certain Taxpayer-Created Intangible Assets" as it relates to Advertising. *See also:* House Ways and Means Committee, Chairman's Comprehensive Tax Reform Discussion Draft as released February 21, 2014, specifically SEC. 3110. Amortization of Certain Advertising Expenses, and corresponding subchapter (A) Certain Wages, as they relate to Advertising and Payroll.

proposed treatment for any related Employee Wages. Such radical departures from 102 years of prudent precedent, shifting from full deductibility to multi-year protracted amortization, would cause disproportionate damage to small businesses and startups. But while the Mom and Pops on Main Street would feel outsized impacts of this monumental shift in tax policy, the proposed reclassification would ultimately savage the golden macroeconomic goose.

Within the sound guidelines of the Chairman's Seven Principles, any Tax Reform measure implicating Advertising generally, or related Payroll specifically, would fail the test on all counts. Advertising's economic multiplier effect is well-established, and any tampering would be self-evidently counterproductive. Advertising is not scored as a tax expenditure, and is not remotely akin to a so-called loophole ripe for closing. Furthermore, a departure from the simple treatment of an ordinary and necessary business expense, to a dramatically more complex amortization scheme, is fundamentally at odds with the broadest consensus goal of actually simplifying the Tax Code.

History has not been kind to tax tampering with Advertising in America, from before the formal beginning. Quickly repealed in 1766, the Stamp Act which fanned the flames of revolution, included an Ad Tax of two shillings for every advertisement regardless of cost or circulation. Nearly two hundred years later, taxing Advertising was seriously considered as a means of stifling consumption by would-be central economic planners fearing inflation in the early 1950s. [2] Again at that time, cooler heads held discretion, the free market and our collective entrepreneurial spirit prevailed then and since in matters involving taxation and the economic fuel of Advertising.

Now before the 114th Congress, having read through volumes of the most recent stakeholder comments on Tax Reform -- including those devoted to latest detailed House Ways and

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[2] *See* **Joint Committee on the Economic Report (1951),** at 58-60, "From a general economic point of view, one of the most desirable excise taxes that could be levied would be a tax on advertising, especially on that urging consumers to buy consumer goods....This is obviously not the time to whip up inflation further by stimulating consumer buying, nor is it a time for making still worse the already grave shortage of so vital and critical a material as newsprint or woodpulp. Yet notwithstanding this, an increased volume of advertising continues to spur consumers on to additional spending." Congressional meddling -- or near-miss policy-making and overreach -- is largely credited to a famed Ad Man of the time, Max Geller, and his provocative manifesto: "If we are fighting inflation and one of the important features of the battle is to curb consumer demand for civilian products which will not be available, then how can we encourage and permit the unrestrained and unregulated 'all-out-effort' of advertisers to sell, and sell, and sell still more?" See Max A. Geller, ***Advertising at the Crossroads: Federal Regulation vs. Voluntary Controls*** (New York: The Ronald Press Co., 1952), at 19.

Means and Senate Finance Committee Discussion Drafts -- we have not found calls from the job-creating business community to tamper with Advertising. Even the Joint Committee on Taxation Report on Present Law and Suggestions for Reform[3] mentions Advertising only 3 times in 569 pages, and only as it relates to current treatment, offering no suggestions for undermining 102 years of tax certainty. The singular reference to origins of such a radical departure come in the second footnote of the Senate Finance Committee's *Summary of Staff Discussion Draft: Cost Recovery and Accounting*[4].

As far as we have ever been able to decipher, the sole rationale for severely limiting and complicating Advertising deductibility is a budgetary money play. Raiding a $169 billion piggy bank to pay-for lowering top rates. The theoretical justification tiptoes back to an obscure staff working paper delivered at a Federal Reserve Board symposium back in 2006. After reviewing this discussion series draft through the lens of practicing small businesses actively engaged in promoting local commerce, not as economic theorists, we critically submit that the tentative and abstract findings of these preliminary materials cannot serve as an economic fig leaf to justify uprooting 102 years of tax policy relating to Advertising. Moreover, there is no basis whatsoever to claw even further into Payroll.

The unsettled issue raised by *Intangible Capital and Economic Growth* is this: Since some Advertising can have a lasting impact on Brand Equity, for instance the case of multinational conglomerate Coca Cola and their happy polar bears, why not treat all Advertising by all businesses as a long-term investment and force it to be amortized? The reasons why not are found in the body and footnotes of the same paper, with these alarm bells for starters: "The literature is not settled on these issues. Some find that all of advertising expenditures...should be expensed."[5] Furthermore, critical attention must be given to the fact that not all Advertising is equal in terms of purpose and enduring effects, and the authors recognize distinctions between brand awareness "compared with ads for, say, 'this week's sale' "[6] -- which is precisely

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[3] ***REPORT TO THE HOUSE COMMITTEE ON WAYS AND MEANS ON PRESENT LAW AND SUGGESTIONS FOR REFORM SUBMITTED TO THE TAX REFORM WORKING GROUPS,*** Prepared by the Staff of the JOINT COMMITTEE ON TAXATION, May 6, 2013, *at 19, 276 and 299.*

[4] "The 5-year recovery periods and the 50% figure for advertising expenses in this section are intended to reflect empirical evidence on the decline in value over time of expenditures for research, advertising, and natural resource extraction. See Corrado, Hulten and Sichel, Intangible Capital and Economic Growth, Finance and Economics Discussion Series 2006-24, Federal Reserve Board, Washington DC. The Chairman's staff requests comments on whether and how these amounts should be adjusted." ***Summary of Staff Discussion Draft: Cost Recovery and Accounting,*** November 21, 2013, *at 8.*

[5] Corrado, Hulten and Sichel, ***Intangible Capital and Economic Growth,*** Finance and Economics Discussion Series 2006-24, at footnote 23.

[6] Id. *at 18.*

the overwhelming majority of all ads placed in every free community paper across the United States of America.

As a practical matter, small business advertising is almost universally an immediate expense to push products and sell services very near-term. Forcing this ordinary and necessary business expense to be fully deducted 5 or 10 years or any extra number after its effects, would disadvantage small firms to large. Moreover, startup firms would be disproportionately impacted over the well-established. Small and upstart companies very often don't have the relative capital and cash flow advantages as larger, established rivals, and many new businesses don't even last to the end of the amortization schedule proposed under the most recent Committee Tax Reform Drafts.

We would not take comfort in artificial threshold exemptions, whether the last proposed $1 million capricious capper, or other figures running north or south. Presumably, any arbitrary cut-off is designed to act as a fuzzy blanket for the generic small business community. It is anything but, as many small businesses -- including automotive dealerships, restaurant franchisees, independent grocers, furniture, hardware and appliance retailers -- anchors on Main Street, USA, currently exceed this random cap. Those small firms on the bubble would now be forced to think twice, cutting Advertising for both expensing and new complexities in compliance concerns. The ensuing counter-virtuous cycle will lead to diminished sales, while damaging the local media ecosystem including our hometown publishers.

There is another critical factor this arbitrary exemption overlooks, and that is the compounding of Advertising throughout the entire supply chain. The manufacturer and distributor promotions, incentives, collateral materials, co-op funding and ad placements made upstream will dry up, and most every small business will be savaged by the government-made drought whether or not their own enterprise falls well below the proposed threshold. Factoring "Certain Wages" into the equations those on top of the supply chain would now need to make, entire departments and divisions would assuredly be at-risk, and the service and support for the point-of-sale small business communities jeopardized to their detriment.

For our united Industry's part, the "Certain Wages" provisions pose an existential threat. Collectively, our publishers are 100% advertiser-supported. Our publications -- community newspapers, shopping guides, alt-weeklies, niche interest magazines -- are all delivered free of charge to our readers. As our revenues derive solely or primarily from Advertising, our enterprises are engaged in activities enumerated in (2) Specified Advertising Expenses, and our collective employee base receives "wages paid or incurred" for "services rendered…primarily related to -- '(i) and activity described in paragraph (2)" and otherwise "(ii) the direct supervision of employees rendering services primarily related to such an activity,"[7] we could face the horrifying prospect of amortizing entire Payrolls industry-wide.

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[7] Ways & Means Comprehensive Tax Reform Discussion Draft *at 365-366.*

The economic disaster to our publishers would be rivaled by the crippling burden of employee reclassification and tax administration. There would also be the sheer absurdity of amortizing out payroll expenses incurred for employees whose services rendered and actual tenure have expired years prior. But the worst aspect of all would be the competitive disadvantage our industry would be placed at relative to similarly situated hometown media that, for the potential rationale that they are not entirely ad-supported, could escape the brutal assault on payroll. Obviously, this flawed tax policy would also perversely discourage growth and hiring to shrink below the capricious threshold for amortization of historically ordinary and necessary business expenses.

Considering the factors detailed above, we believe the elimination of the vital Advertising expense would have an asymmetric impact on small businesses. More broadly, it would otherwise depress discretionary consumption in our tepid, possibly fragile economic recovery. The unintended outcome of such tax policy will result in a net loss of revenues not only for our publishers, but also their small business advertisers, and ultimately to the U.S. Treasury. The reasons for net losses of revenues to Treasury, following any meddling with the current business tax deduction for Advertising, stem from the multiplier effect of Advertising.

For every dollar invested in this discreet economic stimulator, a compounded return of nearly twenty times is realized in the broader economy. Conversely, taxing or artificially discouraging these economic multiplier expenditures leads to less Advertising. Depressed Advertising weakens consumption of goods and services, which directly corresponds with diminished collections of sales and use taxes. Further, direct impediments to the economic multiplier effect of Advertising throw a wet blanket over the entire supply chain, where lost sales mean diminished profits and lost jobs.

The united Free Community Paper Industry shares strong opposition to any proposals that would eliminate or tamper with the current business tax deduction for Advertising and related Wages. We empathize with the monumental task at hand, and champion the earnest bipartisan efforts to forge a road map for comprehensive Tax Reform. However, we stress again that any multi-year amortization scheme as recently proposed would complicate, not simplify, the Tax Code. Failing that primary objective, it would create new harms by penalizing the small business communities we serve. All this, while counterproductively ushering a compounding combination of lost sales taxes from interrelated businesses, lost income and payroll taxes from lost jobs, and lower corporate tax receipts.

We urge the Senate Committee on Finance and its Tax Reform Working Groups to reject the amortization schedules proposed for Advertising and Related Payroll in their immediate predecessors' larger plans for Tax Code modernization. Please maintain established, 102 year time-tested tax policy that allows the full deductibility of all Advertising costs.

Sincerely,

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Submitted on Behalf of the United Free Community Paper Industry Associations:

AFCP - Association of Free Community Papers
MACPA - Mid-Atlantic Community Papers Association
IFPA - Independent Free Papers of America
CPNE - Free Community Papers of New England
MFCP - Midwest Free Community Papers
PNAWAN - Pacific Northwest Association of Want Ad Newspapers
SAPA - Southeastern Advertising Publishers' Association
SACP - Southwestern Association of Community Publications
CPI&I - Community Papers of Indiana and Illinois
CPF - Community Papers of Florida
CPM - Community Papers of Michigan
WCP - Wisconsin Community Papers
TCNA - Texas Community Newspaper Association
CPOWV - Community Papers of Ohio and West Virginia
FCPNY - Free Community Papers of New York